

## REMARKS

Claims 1-9 are rejected. Claim 5 has been cancelled. Claims 1-4 and 6-9 are presently pending in the application. Favorable reconsideration of the application in view of the following remarks is respectfully requested.

### **Rejection under 35 U.S.C. § 112, Second Paragraph:**

The Examiner has rejected claims 1-9 under 35 U.S.C. § 112, second paragraph, indicating that the expression “wherein the concentration of chloride is less than 0.2 percent by weight” fails to set forth a lower limit. This rejection is respectfully urged as in error as the expression meets the requirements of 35 U.S.C. §112, second paragraph.

Utilizing the phrase “less than” in claim language is sufficient to particularly point out and distinctly claim the subject matter which the applicant regards as his invention. A search of issued U.S. patents reveals that thousands of patents have issued with the phrase “less than” in the claim language. For example, U.S. Pat. No. 5,814,347 recites the phrase “wherein the silica or silicate has a particle size less than 1 micron” in claim 8 and “comprising less than 1% by weight of the lithium salt” in claim 10. Claim 1 of U.S. Pat. No. 6,541,523 recites “cyclobenzaprine or a metabolite thereof in an amount of less than 2.5 mg/day.” Additionally, the current patent laws do not explicitly prohibit the phrase “less than” from use in claim language. Therefore, it is respectfully requested that this rejection be reconsidered and withdrawn.

### **Rejection under 35 U.S.C. § 103(a) over Asgharian et al. in view of De Bruiju et al.:**

The Examiner has rejected claims 1-9 under 35 U.S.C. § 103(a) as being unpatentable over Asgharian et al (U.S. 6,139,646) in view of De Bruiju et al (U.S. 6,162,393), indicating that Asgharian teaches a contact lens solution of a cationic polymeric preservative and a preservative enhancer of glycerin, sorbitol and a propylene glycol. The Examiner further states that the reference teaches a chloride concentration of less than 0.2 and the use of a buffer, sequestering agent, simple saccharide. The Examiner states that Asgharian fails to teach the concentrations of some of the carriers, but that the determination of optimum proportions or amounts would have been obvious

to a person skilled in the art. This rejection fails to address all of the claimed limitations, and is therefore urged as in error.

The Examiner relies on De Bruijn in combination with Asgharian solely for the teaching of decanedioic acid which was previously claimed in cancelled claim 5. As claim 5 is canceled this rejection is moot.

Asgharian relates to improving the stability of liquid enzyme solution containing both covalently modified trypsin and water using organic stabilizers. The stabilizers compete with water in the hydrogen bonding of the liquid enzyme solution to reduce the water-hydrogen bonding necessary for enzyme activity.

The instant invention relates to a effective single component solution with a specific combination and concentrations of a preservative enhancer, polyhexamethylene biguanide and chloride. The inventive solution is effectively preserved while reducing the amount of preservatives deposited on contact lenses.

Asgharian teaches a two component solution where trypsin is an active ingredient in a first component that is combined with the second component. The second component contains sorbitol with a concentration of 1.2 weight/volume. There is no indication that the second solution would be effective as a contact lens solution by itself. Indeed, Asgharian teaches that the second component, the solution, need be combined with the first component containing trypsin to be effective. By contrast, the present invention claims a single component solution that is effective as a contact lens solution without the need to combine with a second component. The omission of an element and the retention of its function is an indicia of non-obviousness. *In re Edge*, 359 F.2d 896, (CCPA 1966). The reference fails to teach this a single component solution and therefore, fails to teach or suggest all of the claimed limitations.

Additionally, the instant invention demonstrates surprising results. The specific combination and concentrations of compounds claimed by the instant invention provides superior antimicrobial activity. Applicant kindly directs Examiner's attention to paragraph [0033] of the specification. The antimicrobial activity of samples with no additive or chloride in excess of the claimed limitations show reduced activity, while the samples containing glycerin, sorbitol, mannitol, inositol and dextrose demonstrated increased activity. Paragraph [0035] of the specification demonstrates the reduced

effectiveness of the solution as chloride concentration exceeds 0.2 weight percent. The Examples shown in the specification show surprising results as the specific combination and concentrations of compounds provides improvements over samples outside of the claimed range. Therefore, it is respectfully requested that this rejection be reconsidered and withdrawn.

Applicant respectfully submits that Claims 1, 8 and 9 and all claims that depend therefrom are therefore in condition for allowance.

Applicant appreciates the opportunity to call the Examiner but believes that the forgoing remarks fully address the issues raised by the Examiner. On the other hand, the Examiner is invited to call the undersigned attorney if he has any matters to address that will facilitate allowance of the application.

In the event that Applicant has overlooked the need for an extension of time, additional extension of time, payment of fee, or additional payment of fee, Applicant hereby conditionally petitions therefore and authorizes that any charges be made to Deposit Account No.: 50-3010.

Respectfully submitted,

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